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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
WAIKOLOA RESORT UTILITIES, INC.,)
)
dba WEST HAWAII UTILITY COMPANY)
)
For Approval of Amended)
Contribution-in-aid-of-Construction)
Fee. Transmittal No. 05-01.)
_____)

In the Matter of the Application of)
)
WAIKOLOA WATER COMPANY, INC.,)
)
dba WEST HAWAII WATER COMPANY)
)
For Approval of Amended)
Contribution-in-aid-of-Construction)
Fee. Transmittal No. 05-01.)
_____)

DOCKET NO. 05-0288
(CONSOLIDATED)

ORDER NO. 22126

ATTEST: A True Copy
KAREN HIGASHI
for Chief Clerk, Public Utilities
Commission, State of Hawaii.

Michelle S.U.M. Kau

Filed November 17, 2005
At 10:30 o'clock A .M.

for Michelle S.U.M. Kau
Chief Clerk of the Commission

(1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) WHWC provides water utility service; and (2) West Hawaii Sewer Company ("WHSC") provides wastewater utility service. WHUC provides water and wastewater utility services to the Waikoloa Beach Resort.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership.

The Utilities seek certain tariff changes to their respective CIAC tariff rules, in accordance with Hawaii Revised Statutes ("HRS") § 269-12(b) and 269-16(b) and Hawaii Administrative Rules ("HAR") § 6-61-111.¹ The Utilities request that their proposed tariff changes take effect on November 30, 2005.

The Utilities served copies of their transmittals upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties"). On November 14, 2005, the Consumer Advocate filed Protests of both transmittals.²

¹WHUC's Transmittal No. 05-01, filed on October 31, 2005, and WHWC's Transmittal No. 05-01, filed on October 31, 2005, as amended by letter dated November 1, 2005.

²Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHUC's Transmittal No. 05-01; and Protest by the Division of Consumer Advocacy, filed on November 14, 2005, of WHWC's Transmittal No. 05-01 (collectively, "Consumer Advocate's Protests").

B.

Transmittals No. 05-01

As a condition to receiving service or substantially increasing water consumption to new or substantially modified facilities, developers and commercial applicants must pay a non-refundable CIAC to the Utilities. WHUC Rule XI(1); and WHWC Rule XX(1). The Utilities utilize CIAC funds for the purpose of expanding the capacity of their infrastructure. WHUC Rule XI(2); and WHWC Rule XX(2). The CIAC fee required by each utility as a condition of receiving service to a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. WHUC Rule XI(5); and WHWC Rule XX(5).

The CIAC assessed by each utility is calculated on the basis of the utility's estimate of: (1) the consumer's annual average water consumption, in the case of new facilities; or (2) the consumer's increased water consumption, above historical trends, in the case of substantially modified facilities. WHUC Rule XI(7); and WHWC Rule XX(7). The present guidelines utilized by each utility to estimate water consumption include:

For WHUC

Single-family detached residences: 700 gallons per day

Apartment/condominiums: 700 gallons per day

For WHWC

Single-family detached residences: 600 gallons per day

Apartment/condominiums: 400 gallons per day

WHUC Rule XI(8)(a)(i) and (ii); and WHWC Rule XX(8)(a) and (b).

The Utilities seek to increase the CIAC fee assessed for the provision of water utility service as follows:

For WHUC

From \$4.34 to \$7.51 per gallon of estimated daily water use

For WHWC

From \$4.62 to \$7.51 per gallon of estimated daily water use

In addition, the Utilities seek to amend the present guidelines used to estimate water consumption in calculating the amount of CIAC owed by the developer or commercial applicant, as follows:

For WHUC

Single-family detached residences: from 700 to 738 gallons
per day

Apartment/condominiums: from 700 to 593 gallons per day

For WHWC

Single-family detached residences: from 600 to 616 gallons
per day

Apartment/condominiums: from 400 to 495 gallons per day

The Utilities explain that, due to projected new developments in their respective service areas, significant demands will be made upon their water systems in the near future. Thus, an increase in the CIAC fee is necessary to finance the expansion of their water utility systems to meet the anticipated

increase in demand for water. The identical data and projections used by the Utilities in calculating the proposed increase in the CIAC fee to \$7.51 per gallon of estimated daily water usage are attached as exhibits to both transmittals. In essence, the Utilities' proposed new CIAC amount is based on dollars per gallon of projected average daily demand per water meter for the projected new developments.

In conclusion, the Utilities assert:

Adopting this amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b).

WHUC's Transmittal No. 05-01, at 7, Paragraph 17; and WHWC's Transmittal No. 05-01, at 7, Paragraph 17.

C.

Consumer Advocate's Protest

In its Protests, the Consumer Advocate recommends that the commission suspend both transmittals and hold a public hearing, pursuant to HRS § 269-16(b), for the proposed increase in the Utilities' CIAC fee. The Consumer Advocate disagrees with the Utilities' assessment that the proposed amended CIAC fee does not involve a rate increase to existing customers.

Instead, the Consumer Advocate reasons that the Utilities' proposed amended CIAC fee applies to both new and existing customers who may *substantially modify their facilities*. WHUC Rule XI(1); and WHWC Rule XX(1). "Thus, while an argument

could be made that the proposed increase in the existing CIAC fee will not affect the monthly payments that are currently made by existing customers; the [Utilities'] proposal does result in an increase to the existing rates. As such, the instant request[s] should be considered an increase to a rate set forth in the [Utilities'] tariffs for existing customers who may substantially modify their facilities, resulting in a substantial increase in water use."³

The Consumer Advocate concludes:

1. The Utilities should have filed their transmittals in accordance with HAR § 6-61-86, as opposed to HAR § 6-61-111, since HAR § 6-61-111 sets forth the rule for public utility tariff filings that, in part, do not result in an "increase in rates, fares, or charges[.]" HAR § 6-61-111. By contrast, HAR § 6-61-86 applies to "[a] public utility requesting authority to change any rate, schedule, or charge . . . shall file an application[.]" HAR § 6-61-86. "A filing under the requirements of HAR § 6-61-86[,]" the Consumer Advocate reasons, "would ensure that the [Utilities'] existing customers are made fully aware of the proposed increase to the existing CIAC fee."⁴

2. The same information is required under both HAR §§ 6-61-111 and 6-61-86. As such, the Consumer Advocate will not object to the completeness of the Utilities' transmittals under HAR § 6-61-86. "The Consumer Advocate, however, defers to the

³Consumer Advocate's Protests, at 2 - 3.

⁴Id. at 3.

[c]ommission as to whether the [Utilities'] request[s] should be re-filed in conformance to the appropriate statutes and rules."⁵

3. The proper procedures under HRS chapter 269 governing a rate increase should be followed.

4. For WHWC's Transmittal No. 05-01, the Consumer Advocate: (A) does not object to WHWC's request to file unaudited financial statements on the condition that, if necessary, WHWC makes available for review all documentation supporting its financial statements, including all books and records; and (B) requests that WHWC file the appropriate information regarding WHWC's outstanding notes, as required by HAR § 6-61-75(a)(5).

II.

Discussion

A.

Consolidation

HAR § 6-61-39, which allows the commission to consolidate proceedings on its own initiative, states:

The commission, upon its own initiative or upon motion, may consolidate for hearing two or more proceedings that involve related questions of fact or law or may separate matters in issue for hearing in two or more separate proceedings, if it finds that consolidation or separation will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

HAR § 6-61-39.

⁵Protest by the Division of Consumer Advocacy of WHUC's Transmittal No. 05-01, at 4; and Protest by the Division of Consumer Advocacy of WHWC's Transmittal No. 05-01, at 3.

WHUC and WHWC are affiliated utilities that provide water service to the Waikoloa Beach Resort and Waikoloa Village service areas, respectively. Both Utilities seek to increase the CIAC fee to \$7.51 per gallon of estimated daily water usage, based on the same supporting data and projections.

The commission finds that both transmittals are substantively identical and involve the same or similar issues and facts. In the interests of administrative economy and efficiency, therefore, the commission, on its own motion, will consolidate WHUC's and WHWC's respective transmittals into a single docket, consistent with the intent of HAR § 6-61-39.⁶ Accordingly, on a going-forward basis, all future filings for the Utilities' transmittals shall be made in this docket.

B.

Suspension

HRS § 269-16(b) states in part:

No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice as prescribed in [HRS] section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, or charges. The commission may, in its discretion and for good cause shown, allow any rate, fare, charge, classification, schedule,

⁶See Order No. 21642, filed on February 8, 2005, in Docket No. 05-0037 (consolidated) (Net Energy Metering transmittals filed by Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, consolidated into a single docket).

rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in [HRS] section 269-12(b). A contested case hearing shall be held in connection with any increase in rates and such hearing shall be preceded by a public hearing as prescribed in [HRS] section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice[.]

HRS § 269-16(b) (emphasis added).

In accordance with HRS § 269-16(b), the commission finds it prudent to suspend the Utilities' transmittals as the Consumer Advocate raises concerns the Utilities should address.⁷ Within thirty (30) days from the date of this Order, the Utilities shall file a joint position statement that addresses the matters raised by the Consumer Advocate in its Protests.⁸ The Utilities' response shall also explain why WHWC's request to increase its CIAC fee was not included as part of its recently completed 2005 calendar test year rate case in Docket No. 04-0373.⁹

⁷The commission, however, does not, by this Order, open an investigation under HAR § 6-61-57(3)(B).

⁸The commission recognizes the Utilities' opportunity to timely respond to the Consumer Advocate's protest, no later than five (5) days prior to the proposed effective date (November 30, 2005) of their respective transmittals. See HAR § 6-61-61. Nonetheless, the commission finds it prudent to suspend the Utilities' transmittals at this juncture, with the Utilities having additional time to address the matters raised by the Consumer Advocate.

⁹In Docket No. 04-0373, the commission issued: (1) Proposed Decision and Order No. 21885 on June 22, 2005; and (2) Decision and Order No. 21919 on July 15, 2005. On October 31, 2005, WHWC filed Transmittal No. 05-01.

III.

Orders

THE COMMISSION ORDERS:

1. The Utilities' respective transmittals, filed on October 31, 2005, are consolidated and suspended for further review.

2. Unless ordered otherwise, within thirty (30) days from the date of this Order, the Utilities shall file a joint position statement that addresses the matters raised by the Consumer Advocate in its Protests. The Utilities' response shall also explain why WHWC's request to increase its CIAC fee was not included as part of its recently completed 2005 calendar test year rate case in Docket No. 04-0373.

3. Further commission action will follow.

DONE at Honolulu, Hawaii November 17, 2005.

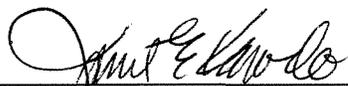
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By 
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22126 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Sandra Teo
for _____
Karen Hicashi

DATED: November 17, 2005